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tax court

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

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) No. 01A02-0806-CR-513

January 22, 2009

MAY, Judge

Nathan K. Rhymer appeals the imposition of his previously-suspended ten-year sentence on revocation of his probation. He claims the court abused its discretion because he was only eighteen years old and has low intelligence. Based on the evidence in the record, we find no abuse of discretion and affirm.

FACTS AND PROCEDURAL HISTORY

On December 20, 2007, seventeen-year-old Rhymer was charged with attempted robbery resulting in bodily injury, a Class B felony. After he was waived into adult court, Rhymer pled guilty pursuant to a plea agreement that called for a ten-year suspended sentence, with ten years of probation and 180 days of Community Corrections. The court accepted the plea and sentenced him accordingly on January 11, 2008.

On April 17, 2008, the State alleged Rhymer violated his probation by tampering with a drug screen urine sample, by using marijuana, by failing to pay the fees for Community Corrections, and by failing to enroll in the mandatory counseling program. On April 21, the State alleged Rhymer violated conditions of his home detention. On May 27, the State filed a third petition alleging Rhymer failed to fill out an employment application and failed to go directly to and from the potential employer's location.

At a hearing on May 30, 2008, Rhymer admitted the violations alleged on April 17th. The court heard evidence from Rhymer's probation officer, the county's Director of Community Corrections, and Rhymer, then revoked Rhymer's probation and ordered him to serve all ten years of his suspended sentence.

DISCUSSION AND DECISION

Rhymer asserts the court abused its discretion when it imposed all ten years of his suspended sentence. “Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled.” *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). Trial courts determine the conditions of probation and may revoke probation if those conditions are violated. *Id.* Judges “have considerable leeway in deciding how to proceed” when revoking probation. *Id.* Therefore, we review each decision only for an abuse of discretion, which occurs when the decision is “clearly against the logic and effect of the facts and circumstances” before the court. *Id.*

Rhymer violated his probation by submitting toilet water as urine for a drug screen, using marijuana, failing to pay his probation fees, and failing to begin counseling. Rhymer asserts he could not pay the probation fees because he did not have employment, and he could not find employment because he did not have a high school diploma. However, his probation officer, Thomas Fox, testified Rhymer had stopped attending the classes intended to help him obtain his GED.

Rhymer claims he could not start counseling because he did not have money to pay for the program and said Fox told him not to bother going for the intake appointment until he had a job. Fox testified he discussed the required counseling with Rhymer at five meetings in the four months Rhymer was on probation and he encouraged Rhymer to get started with the counseling. The counseling center imposed fees on a sliding scale, so that Rhymer might have been able to pay very little for sessions before he had employment.

Ian Gilbert, the Director of Adams County Community Corrections, testified that Rhymer's performance in his program had been "poor," which is the lowest description of performance he assigns. (Tr. at 39.) During Rhymer's three months in the program, he violated rules by having another probationer in his house, "passively attempted to search for employment," (*id.* at 40), did not take advantage of employment offered to him, left the house without permission, and had knives, alcohol, and rolling papers in his bedroom. Gilbert did not believe Rhymer was a good candidate for his program and, if it were up to Gilbert, Rhymer would not be permitted to return to Community Corrections.

Similarly, Probation Officer Fox described Rhymer as lacking "real initiative to accomplish anything." (*Id.* at 27.) He found Rhymer to be at the lower end of maturity and intelligence for the eighteen-year-olds with whom he had worked.¹ Fox stated, "At this point, I don't see him being successful on probation so I would, I guess ask the probation time be done." (*Id.* at 32.) He continued, "I don't want to give up on anybody but until [he] show[s] maturity, I think [he is] going to struggle and they're not going to be successful on either probation or community corrections." (*Id.* at 33.)

In the two years before committing the attempted robbery underlying the probation herein, while Rhymer was still a juvenile, he spent six months on informal probation for truancy. Before being released from that informal probation, Rhymer was placed on formal probation for committing residential entry. He violated that formal probation and was placed in the Jay County Youth Shelter. Probation Officer Fox, who worked with Rhymer during those two years, had not seen any changes in Rhymer's behavior based on those juvenile punishments. Nor had Officer Fox seen any changes in

¹ Fox noted Rhymer could understand the rules he was asked to follow.

Rhymer based on the filing of charges in adult court. Because none of those successfully modified Rhymer's behavior, Fox believed placement in the Department of Correction was appropriate. Nevertheless, Fox did not believe time in the Department of Correction would change Rhymer such that he would be appropriate for probation after serving some time. (*Id.* at 37.)

Based on this record, we cannot say the court abused its discretion when it imposed all ten years of Rhymer's suspended sentence. Accordingly, we affirm.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.